



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

---

In the Matter of

[REDACTED]

DECISION

CTI/145347

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed November 17, 2012, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (4), to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a hearing was held on January 08, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly issued a tax intercept notice to the Petitioner.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

Department of Children and Families  
201 East Washington Avenue  
Madison, Wisconsin 53703

By: Daryl Caper

Milwaukee Early Care Administration - MECA  
Department of Children And Families  
1220 W. Vliet St. 2nd Floor, 200 East  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On April 9, 2012, the agency issued Child Care Overpayment Notices and worksheets to the Petitioner notifying him that the agency intends to recover overpayments of \$1,858.91 for the

period of August 16, 2010 – September 30, 2010 and \$1,832.48 for the period of February 14, 2012 – March 31, 2012 and \$5,506.25 for the period of February 16, 2011 – September 30, 2011. The notices also informed the Petitioner of the right to request a hearing regarding the overpayment by filing an appeal within 45 days with the Division of Hearings and Appeals.

3. On May 2, 2012, the agency issued a Repayment Agreement to the Petitioner.
4. On June 4, 2012, July 3, 2012 and August 2, 2012, the agency issued dunning notices to the Petitioner regarding the child care overpayments.
5. On September 14, 2012, the agency issued a notice of state tax intercept to the Petitioner informing her of the intent to intercept tax refunds in the amount of \$9,197.64. The notice also informed the Petitioner of the right to file an appeal regarding the tax intercept within 30 days of the date of the tax intercept notice.
6. On November 17, 2012, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### **DISCUSSION**

The Department of Children and Families is required to recover all overpayments of public assistance benefits, including child care payments. Wis. Stat., §§49.195(3), 49.155. Wis. Stat., §49.85, provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayments of general relief benefits, food stamps, W-2 benefits including child care, and Medical Assistance.

The Department must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. Id. at §49.85(3).

The hearing right is described in Wis. Stat., §49.85(4)(b), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.

Petitioner testified at the hearing that she wished to appeal the merits of the overpayments. Petitioner was notified of the overpayments in April, 2012 and she did not appeal. An appeal of a negative action concerning child care benefits must be filed within 45 days of the action, and the notices inform the recipients of that deadline. Wis. Adm. Code, §HA 3.05(3). Because petitioner did not appeal after the April notice, she cannot appeal the merits of the overpayment now.

Specifically regarding the tax intercept action, the Petitioner failed to file an appeal of that action within 30 days of the date of notice. Thus, her appeal of the tax intercept action is also untimely.

### **CONCLUSIONS OF LAW**

The Petitioner's appeal is untimely.

**THEREFORE, it is**

**ORDERED**

That the petition be, and hereby is, dismissed.

## REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

## APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

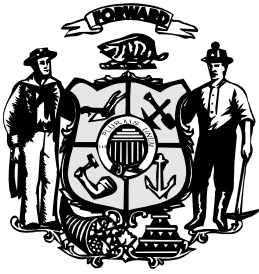
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 5th day of March, 2013

---

\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

David H. Schwarz  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 5, 2013.

Milwaukee Early Care Administration - MECA  
Public Assistance Collection Unit